

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT
D-0101-CV-2012-**

ROBERT ORTIZ,

Plaintiff,

v.

NEW MEXICO DEPARTMENT OF HEALTH,

Defendant.

**COMPLAINT FOR VIOLATIONS OF THE WHISTLEBLOWER PROTECTION ACT,
VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT**

Plaintiff as his Complaint states as follows:

I. INTRODUCTION

1. Robert Ortiz (“Ortiz”) was fired because he brought forward allegations of suspected fraud with the Women, Infants and Children program (“WIC”), which the New Mexico Department of Health (“DOH”) operates. The partial audit performed that Ortiz triggered resulted in numerous changes in the financial reconciliation process for the WIC program and a recommendation for DOH to repay the USDA approximately \$500,000.00. In response to Ortiz’s continued advocacy, DOH removed job responsibilities, access to the automated financial record keeping system, banished Ortiz from main office building for DOH and fired Ortiz for discussing the WIC audit with the media.

II. VENUE AND JURISDICTION

2. Ortiz is a resident of Santa Fe County, New Mexico.

3. DOH is a state agency as defined in New Mexico statute with its principle place of business Santa Fe, New Mexico.

4. This case is brought pursuant to the Whistleblower Protection Act, NMSA 1978, §§10-16C-1 et. seq.; the Inspection of Public Records Act, NMSA 1978, §§14-2-1 et. seq.

III. FACTS

5. Ortiz is retired from Los Alamos National Laboratory after 27 years of service. During his employment with Los Alamos National Laboratory, Ortiz held a national security clearance at one of the highest levels denominated as a “Q” clearance, as well as receiving other distinguished service awards.

6. Ortiz desired to give back to the state of New Mexico and retired from Los Alamos National Laboratory after applying for a position with DOH. Ortiz was hired as a General Manager I in April 2008. Ortiz’s position was the Financial Management Bureau Chief with the Administrative Services Division of DOH.

7. In July 2008, Ortiz was promoted to Deputy Director of the Administrative Services Division with DOH.

8. In July 2008, Dorothy “Duffy” Rodriguez (“Rodriguez”) was the Deputy Cabinet Secretary to DOH. Currently, Rodriguez is Deputy Cabinet Secretary for the Department of Finance Administration.

9. DOH is responsible for the administration of the WIC program. The financial component of the WIC program fell under the oversight of the Division Ortiz was assigned to operate as a deputy director. The WIC program provides federal monies to states to administer the delivery of program services in accord with a federal regulatory scheme. The state must agree to comply with the federal regulatory scheme outlined in order to participate in the WIC program.

10. The funding mechanism for the WIC program operates using the federal fiscal year calendar. The federal fiscal year for the WIC program is October 1st through September 30th. The DOH fiscal year is July 1st through June 30th.

11. In 2008, DOH operated on an automated computer based payment and accounting system called “SHARE” provided by the state.

12. The federal regulations for the WIC program mandate that funds can only be spent during the fiscal year for which the funds were designated. The federal regulations do not permit costs from a prior fiscal year to be paid for in a current fiscal year, and require proper accounting procedures to track funds for the fiscal year the funds are issued, including a process to handle funding and expenditures when the federal and state fiscal years are different.

13. DOH is mandated to follow federal and WIC regulations when administering the program in New Mexico, including the regulations governing the how funds must be allocated, tracked and budgeted from one fiscal year to another. The WIC program does not permit prior year expenses from a certain fiscal year to be carried over and expended in a subsequent fiscal year.

14. In October 2008, Rodriguez directed Ortiz to reconcile the WIC programs financial records with the SHARE system financial records to reflect the end of the federal fiscal year on September 30th.

15. As part of the review to reconcile the SHARE records with the WIC program's charges, Ortiz discovered that \$1.7 million dollars in costs from the 2008 federal fiscal year were improperly expensed to the 2009 federal fiscal year in the WIC program funds and recorded in SHARE as 2009 federal fiscal year expenditures. DOH reported the \$1.7 million in costs to the federal WIC program via the final FNS-798 report as part of the total for 2008 food costs.

16. In March 2009, Ortiz directed the WIC program director, Deanna Torres, to adjust the WIC SHARE records to reflect moving \$1.7 million from the WIC 2009 federal fiscal year back to the WIC 2008 federal fiscal year in accord with federal regulations. DOH was not permitted to use 2009 WIC funds to pay WIC expenses incurred in 2008.

17. During a meeting in March 2009, the DOH management reached consensus on this budget adjustment through a journal entry accounting process to move \$1.7 million of costs back to fiscal year 2008 for the WIC program. This was required by federal regulations and GAAP. DOH did not use the budget adjustment request process contained in New Mexico state law.

18. The decision to move costs to the appropriate cost objection (federal fiscal year) was reflected in the weekly meeting notes regularly taken during the WIC and Grants Management meetings. Approval for the proper allocation of prior year WIC expenditures was approved by then Deputy Cabinet Secretary, Jessica Sutin ("Sutin").

19. Even though Sutin announced her resignation, she remained in the Deputy Cabinet Secretary position in March 2009. Sutin resigned and returned after she delivered her baby,

20. In June 2009, Michael Mulligan (“Mulligan”) became acting Administrative Services Division Director. Mulligan ordered Ortiz to reverse the journal entry from March 2009 to place the \$1.7 million of costs back into the 2009 fiscal year budget. Mulligan’s order was illegal since federal regulations prohibit funding from current fiscal years to be used to pay prior fiscal year costs.

21. In addition to Mulligan’s directive to change the journal entry, Rodriguez also joined in with Mulligan to put pressure on Ortiz to change the cost correction.

22. Ortiz complied with Mulligan’s directive in June 2009.

23. In June 2009, the WIC program was not in jeopardy for an overrun, since federal funding for 2009 would continue through September 30th. DOH asserts it would have overrun the WIC program if it complied with federal regulations as Ortiz advocated. It is not known where the \$1.7 million for the 2008 program was spent for 2009. Additionally, over \$2 million of costs were identified to move off the 2008 federal fiscal year onto the 2007 federal fiscal year.

24. During July 2009, Ortiz met frequently with Rodriguez and Mulligan regarding the directive to charge the fiscal year 2009 WIC program with expenses occurred from the 2008 WIC program year. Ortiz informed Mulligan and Rodriguez he believed the directive they issued and enforced was fraudulent. Ortiz informed Mulligan and Rodriguez that using 2009 federal funds in 2008 was improper, and possibly illegal or fraudulent. Neither Rodriguez nor

Mulligan directly addressed Ortiz's concern, and instead, embarked on a retaliatory rampage against Ortiz culminating in his dismissal on June 1, 2012.

25. In response to Ortiz's continued advocacy over the DOH's improper use of WIC money from the prior federal funding year to pay previous year expenses, his work environment became increasingly hostile and acts of retaliation were directed at him. Rodriguez and Mulligan made it clear that Ortiz's job was in jeopardy because Ortiz did not believe federal program regulations for WIC did not permit DOH to use money allocated for use in 2009 be used to pay expenses incurred in 2008 and did not support Rodriguez's and Mulligans' supplanting these funds. Mulligan and Rodriguez did not use the BAR process to reallocate \$1.7 million from the WIC program in June 2009.

26. The reconciliation effort Ortiz undertook in March 2009 was exhaustive and left no doubt about the conclusion that 2009 WIC money was improperly used to pay for 2008 WIC costs.

27. Ortiz met with Alfredo Vigil ("Vigil"), the former cabinet secretary for the Department of Health, on or about August 12, 2009 after Rodriguez and Mulligan refused to address Ortiz's reasonable belief the June 2009 directive to change the expenses of \$1.7 million from prior year expenses to the current fiscal year was fraudulent.

28. During his meeting with Vigil, Ortiz asked for protection from retaliation due to the statements and actions Rodriguez and Mulligan made to Ortiz about continuing to assert the June 2009 WIC charge violated federal law, GAAP principles and New Mexico state budget laws. Ortiz asked Vigil for protection from retaliation and invoked the New Mexico Fraud Against the Taxpayer Act to protect himself from the ongoing threats and retaliation.

29. On August 12, 2009, Mulligan threatened Ortiz's employment. Mulligan stated to Ortiz that a "black cloud has just formed over your head and is going to descend on you". Ortiz reasonably believed that if he continued to advocate for the WIC program, his job was in jeopardy.

30. On August 12, 2009, Ortiz was placed on paid administrative leave by Vigil to protect him from Rodriguez's and Mulligan's retaliatory acts.

31. Ortiz requested a temporary assignment and was moved to the Health Policy Commission on August 25, 2009, but was not provided with job assignments and full time work. Ortiz remained with the Health Policy Commission for approximately four months.

32. Ortiz had all of these authorizations for the SHARE financial program removed and never had his full SHARE authorizations reinstated during his employment with DOH. Ortiz could not fully perform any financial transactions or reviews with access to the SHARE program.

33. DOH did not communicate what process it would undertake to review Ortiz's allegations about the WIC program monies be allocated in violation of the federal regulations during his move to the Health Policy Commission.

34. In November 2009, Ortiz filed a complaint with the New Mexico Office of the State Auditor. By filing this complaint with the New Mexico Office of the State Auditor, Ortiz continued to engage in protected and oppositional activity. The New Mexico Office of the State Auditor declined investigation because the allegations involved federal money only.

35. In November 2009, Ortiz contacted the U.S. Department of Agriculture's Office of Inspector General, Ortiz requested the WIC expenditures and journal entry be investigated.

36. The U.S. Department of Agriculture's Office of Inspector General undertook an audit ("USDA audit") for a sample of prior year payments for fiscal year 2008 and 2009 at Ortiz's request.

37. Ultimately, the U.S. Department of Agriculture issued a report in August 2011 finding improper expenditures, improper accounting techniques and \$500,000.00 funds misapplied for the WIC program in 2008. The USDA audit only reviewed a sample of WIC expenditures for 2008, yet still identified serious financial issues .

38. In the Fall 2009, DOH also undertook an audit of Ortiz's allegations about the WIC program. DOH did not conduct an independent audit of Ortiz's allegations.

39. The DOH internal auditors were in the chain of command for Rodriguez. In fact, Jim Green ("Green") was in charge of internal audits for DOH at this time. Green later signed Ortiz's dismissal letter.

40. DOH's external auditor, Myners & Company, became aware of Ortiz's allegations. Based on information and belief, the outside auditors had done other similar work for DOH, conducted an audit for all DOH programs and did not conduct an audit exclusively for the WIC program, and the external auditors reported its results to Rodriguez. The external auditors never interviewed Ortiz about his allegations.

41. When the outside audit was completed, findings about poor accounting practices and the use of journal entries to move funds within the DOH budget were identified.

42. In January 2010, Ortiz requested that he be moved from the Health Policy Commission due to insufficient work and not working within the financial area. Ortiz made this request to Vigil.

43. Ortiz was moved to Human Resources to perform research assignments and the Information Technology Division to assist with budget matters.

44. Ortiz was still unable to complete the financial assignments for the Information Technology Division because he was not provided with access to SHARE despite his repeated requests to have access to the SHARE financial program restored.

45. Upon his transfer to Human Resources and the Information Technology Division, Ortiz was not permitted to talk to any employee of the Administrative Services Division for which Mulligan was the acting director. Daniel Jacob, Human Resources Director, informed Ortiz what parts of the Runnels building Ortiz was permitted to enter. The Runnels building houses the vast majority of DOH central office administrative functions.

46. Ultimately, Ortiz was moved with the majority of the Information Technology Division employees and was not permitted to enter the Runnels building in retaliation for Ortiz's ongoing protected and oppositional activity to the WIC program financial issues reported.

47. DOH continued to deny Ortiz the right to work in his position as a General Manager II throughout 2010 up to his dismissal on June 1, 2012.

48. Ortiz made requests to return to his position as a General Manager II in September 2010 and was denied by Human Resources Director Daniel Jacobs on October 8, 2010.

49. On November 5, 2010, Ortiz filed a grievance with Vigil and again requested his SHARE authorizations be reinstated. Ortiz was the only employee in the financial section of DOH not to have access to the SHARE program. Ortiz stated the continued denial of his reinstatement to the General Manager II position and restoration of SHARE authorizations were in retaliation for his allegations about the WIC program.

50. On November 12, 2010, Ortiz filed an Inspection of Public Records Act (“IPRA”) with DOH. Ortiz requested all of the WIC/Grants Management weekly meeting minutes and the notes used to prepare the weekly minutes.

51. Based on information and belief, attorneys for DOH did not attend the weekly WIC/Grant Management weekly meetings. The minutes from the weekly meetings and notes would reflect the rationale and approval regarding the 2008 and 2009 WIC expenditures and funds that were the subject of Ortiz’s allegations and subsequent retaliatory acts.

52. DOH has not complied with Ortiz’s IPRA request from November 12, 2010 and has claimed the notes from weekly WIC/Grant Management meetings were not public information subject to disclosure under IPRA. Notes from meetings are not shielded from disclosure and are public records. DOH is in violation of IPRA for its failure to provide Ortiz with the information he requested for meeting notes and minutes.

53. On December 1, 2010, Daniel Jacobs, the former Human Resources Director, removed Ortiz’s procurement and contract responsibilities for the Information Technology Division because Ortiz was accused of “lurking” in the Procurement Section of the Runnels building. DOH did not conduct an investigation of these allegations in December 2010, but used

these allegations to justify its further retaliation against Ortiz by denying him access to the Runnels building.

54. On December 29, 2010, Ortiz filed another grievance about having the Information Technology Division job duties removed and being accused of “lurking”. Ortiz was required to check on the status of contracts and that required his presence in the procurement section. On December 1, 2010, the Information Technology Division was moved from the Runnels building due to remediation for the cooling system. Mulligan denied Ortiz’s grievance on January 10, 2011. At that time, Mulligan served as acting Deputy Cabinet Secretary for DOH.

55. On or about January 18, 2011, Ortiz tried to meet with Catherine Torres, M.D., (“Torres”) who was appointed as the new cabinet secretary for DOH. Torres refused to meet with Ortiz because his grievance involved Rodriguez. Rodriguez was a newly appointed deputy cabinet secretary for the Department of Finance Administration at the time, and Torres would not schedule a meeting with Ortiz because it concerned another political appointee.

56. On January 20, 2011, Ortiz reported his allegations to the Office of the Governor. Ortiz stated his retaliation claims and his suspicion of fraudulent activity in the WIC program. Ortiz’s complaint was not listed publicly on the Office of the Governor’s waste, fraud and abuse complaint listing. The chief attorney for the Office of the Governor sent an email to Ortiz that his complaint was being sent to Keith Gardner and Brian Moore. Ortiz did not receive a response to his complaint from Keith Gardner or Brian Moore. Ortiz reported the allegations about the WIC program to the Office of the Governor after listening to Governor Martinez’s first State of the State address where she called on state employees to report fraud, waste and abuse.

57. In February 2011, DOH restored financial job responsibilities to Ortiz for the Information Technology Division. DOH did not restore SHARE authorization to Ortiz. Ortiz was relegated to getting small quotes for software and hardware purchases. Ortiz was not performing the duties for a General Manager II position and had not performed these duties since August 2009.

58. On April 5, 2011, Ortiz sent a memorandum to Torres requesting his original assignment to his position as deputy director of the Administrative Services Department be reinstated. Torres responded to this request by stating his position was being reviewed by the State Personnel Office (“SPO”) as part of the Administrative Services Division’s desk audits and Torres would not make a final decision until after she received a final report from SPO. Torres estimated she would receive a report from SPO on or about May 27, 2011. Ortiz never received a copy of a report from SPO or information about what was in the report Torres referenced.

59. In July 2011, Ortiz received an evaluation. DOH did not list any job performance issues in this evaluation. DOH began the process to reinstate Ortiz’s authorization for SHARE. However, DOH stopped Ortiz’s authorization to the SHARE program at the direction of Deputy Cabinet Secretary Jim Green (“Green”). During 2008 through 2010, Green was supervised by Mulligan and Rodriguez. Green did not provide a reason to stop Ortiz’s reauthorization for the SHARE program.

60. In August 2011, the USDA audit was released. The findings of the USDA audit supported Ortiz’s allegations about the WIC program that he continued to bring forward and for which he continued to suffer retaliation through the failure to reinstate him to his prior position

and responsibilities, reauthorizing his access to the SHARE financial program, and not permitted Ortiz to be present in the Runnels building.

61. The FNS-798 document is the report DOH uses to report revenue costs and expenses to the U.S. Department of Agriculture for the WIC program. The USDA audit was a sample of expenditures for the DOH WIC program and as reflected in DOH's FNS-798 submissions.

62. The USDA audit released in August 2011, shows:

a. Variances between food outlays reported on the FNS-798 report and the food outlays from the WIC system reported from federal fiscal year 2006 through 2009; and

b. Variances between food and NSA outlays reported on the FNS-798 report and the General Ledger for SHARE for federal fiscal year 2006 through 2009; and

c. Adjusting journal entries recorded in the General Ledger for SHARE without supporting documentation; and

d. One to one reconciliation of the FIs were not performed and band processing and FI data errors were not investigated in a timely manner; and

e. All income and expenditures items that appeared on the FNS-798 report were not reflected on the General Ledger for SHARE.

These financial irregularities were the same allegations Ortiz reported to DOH officials.

63. On August 29, 2011, Ortiz contacted Torres again to complain about a hostile work environment on the basis of retaliation. Ortiz complained about his job assignments,

working below his classified position and stated to Torres that his treatment was untenable and Green was complicit in the retaliation

64. On September 8, 2011, DOH issued a press release claiming vindication as a result of the USDA audit. DOH knew or should have known the USDA audit was conducted using a sample, was an administrative review and was not conducted to review fraud. DOH knew or should have known the USDA audit supported Ortiz's allegations about the financial irregularities and poor accounting practices.

65. The Inspector General for the USDA sent an email stating the WIC federal program was recommending that DOH pay back approximately \$500,000.00 to the WIC program as a result of the USDA audit. DOH did not state any information about this payback requirement in its press release on September 8, 2011. Instead, DOH focused on the no fraud finding, but did not explain the USDA did not conduct a fraud investigation, but an administrative review of a sample of WIC cases.

66. In September 2011, the *Santa Fe Reporter* contacted Ortiz for comment about the DOH press release. Ortiz provided comments and the federal WIC report as a private citizen to the *Santa Fe Reporter* and expressed his opinion about the USDA audit.

67. On October 5, 2011, Ortiz was placed under investigation. DOH never informed Ortiz he was under investigation. Ortiz began to suspect he was under investigation during a second meeting Ortiz had with Leroy Lucero ("Lucero") of Casewell Investigations. Lucero conducted two interviews of Ortiz and during both interviews questioned Ortiz about his comments to the *Santa Fe Reporter* on September 21, 2010. Lucero refused to interview employees Ortiz suggested regarding the "lurking" allegations from December 2010 that

resurfaced in the fall 2011. Lucero also refused to review information Ortiz had on the fraud allegations.

68. On November 28, 2011, Ortiz was placed on paid administrative leave pending an investigation of him. This is the same day the Information Technology Division moved back into the Runnels building.

69. Deputy Cabinet Secretary, Wally Vette, delivered the information to Ortiz about his placement on administrative leave and informed Ortiz the investigation of Ortiz would be fast tracked. Ortiz was informed complaints about him were received. After being on administrative leave from November 28, 2011 through June 5, 2012, Ortiz was dismissed from his position. Ortiz was fired on June 6, 2012 because of comments he made as a private citizen about the WIC program and suspected fraud.

70. DOH dismissed Ortiz from his position because he spoke to the *Santa Fe Reporter* as a private citizen about unlawful and improper acts at the DOH. DOH dismissed Ortiz for articles appearing in the *Santa Fe Reporter* on December 4, 2009, January 13, 2010, February 16, 2011 and September 21, 2011. Ortiz did not participate in the *Santa Fe Reporter* article dated December 4, 2009.

71. The only *Santa Fe Reporter* articles Ortiz participated in were the January 13, 2010, February 16, 2011 and the September 21, 2011. Ortiz's comments were protected speech since he spoke as a private citizen about a matter of public concern, suspected fraud in the WIC program DOH operated. Ortiz could not and was not responsible for the content of the *Santa Fe Reporter* blog comments.

72. The comments Ortiz made and that are quoted in his dismissal letter are truthful and based on Ortiz's reasonable belief of suspected fraud in the WIC program.

73. DOH knew or should have known its September 8, 2011 press release about the USDA audit was misleading, disingenuous and that the allegations Ortiz brought forward were proved by the USDA sample audit.

74. Ortiz was dismissed from his DOH General Manager II position in retaliation for bringing forward allegations about the WIC program.

75. The allegations contained in Ortiz's dismissal letter are false and are an attempt to chill his ongoing advocacy for the WIC program to be operated in accord with federal financial regulations.

76. Ortiz was not disingenuous with his comments to the media, and as a private citizen, Ortiz did not need to seek prior DOH approval before speaking to a reporter.

77. The DOH media policy cited in Ortiz's dismissal letter is an illegal prior restraint of speech and unenforceable.

78. Ortiz was ready, willing and able to address the allegations he made about the WIC program, but DOH refused to conduct an independent audit to perform a full review of the WIC program.

79. DOH knew or should have known that the U.S. Department of Agriculture planned to request payback of \$500,000.00 at the time DOH proposed to dismiss Ortiz.

80. DOH's dismissal of Ortiz is an adverse action and in retaliation for Ortiz's advocacy for the WIC program and the allegations he continued to bring forward against Rodriguez and Mulligan.

81. Ortiz appealed his dismissal to the New Mexico State Personnel Board, SPO 12-049, and will seek stay of that proceeding pending the outcome of this Complaint.

COUNT I
VIOLATION OF WHISTLEBLOWER PROTECTION ACT

82. Plaintiff re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 81 above as if set forth hereafter in detail.

83. The Whistleblower Protection Act provides that public employees should not take any retaliatory actions against a public employee because the public employee has communicated to the employer or a third party information about an action or failure to act that the public employee believes in good faith constitutes an unlawful or improper act, or because the public employee objects to or refuses to participate in an activity or policy or practice that constitutes an unlawful act.

84. Ortiz has identified fiscal malfeasance and improper acts during his employment with DOH from March 2009 through June 1, 2012. Ortiz engaged in activity protected under the Whistleblower Protection Act.

85. DOH retaliated against Ortiz because of his protected and oppositional activity. Ortiz has had job duties removed, placed outside of the main office building to which he was assigned, denied reinstatement to his assigned positions, not provided with access to SHARE financial programs and finally dismissed for bringing forward his complaints about the WIC program and having these complaints published.

86. Ortiz was placed on administrative leave for more than six months and faced three separate investigatory interviews for allegations made about him even though DOH never provide Ortiz with notice that he was under investigation. DOH did not investigate Ortiz's claims.

87. DOH retaliated and dismissed Ortiz to chill his advocacy. The reasons for Ortiz's dismissal are pretext and in retaliation for Ortiz's protected and oppositional activity protected under the Whistleblower Protection Act.

88. DOH's acts of retaliation were temporally proximate to his advocacy.

89. As a direct and proximate result of the conduct alleged in this complaint, Ortiz has suffered damages. In accord with the Whistleblower Protection Act, Ortiz is entitled to all relief necessary to make him whole, including reinstatement, damages for double lost wages and benefits, and compensation for humiliation, anguish and emotional distress. Ortiz is also entitled to recover her reasonable attorney fees and litigation costs.

WHEREFORE, Plaintiff Robert Ortiz prays for judgment against Defendant, Department of Health, for compensatory damages, double lost wages, reinstatement, interest as allowed under law, attorney's fees and costs, all in an amount to be determined at trial, plus such other and further relief as the Court deems just and proper.

COUNT II
VIOLATIONS OF THE INSPECTION OF PUBLIC RECORDS ACT

90. Plaintiff re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 89 above as if set forth hereafter in detail.

91. Ortiz made an Inspection of Public Records request to DOH for all notes and minutes for the WIC/Grants management meeting and in particular for the notes from the March 2009.

92. Notes from DOH meetings are public records. In February 2009, Deanne Torres, WIC Director for DOH, stated during a WIC and Financial Accounting bureau meeting that her contractor would be taking official minutes and notes on a new state purchased laptop/netbook. The minutes were distributed via email to all attendees of these regularly conducted meetings.

93. DOH failed to disclose the notes from the WIC/Grant management meetings as Ortiz requested.

94. There is not a recognized exception to Inspection of Public Records Act (“IPRA”) for meeting notes that are regularly prepared during official government meetings.

95. DOH should have provided the meeting notes to Ortiz and improperly denied his IPRA request.

96. DOH should have preserved this information since it was aware of Ortiz’s advocacy and threats to his employment.

WHEREFORE, Plaintiff Robert Ortiz prays for judgment against Defendant, Department of Health, to receive the information he requested under the IPRA request made, an assessment of a penalty against DOH in accord with NMSA §14-2-12 D, attorney’s fees and costs, plus such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Diane Garrity

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